

## TRANSPORTATION DEPARTMENT[761]

### Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 465B.2, the Iowa Department of Transportation, on August 9, 2017, adopted amendments to Chapter 165, “Recreational Trails Program,” Iowa Administrative Code.

The amendments to this chapter:

- Add new definitions and update the definition of “recreational trails fund.”
- Correct contact information.
- Update implementation statutes and the chapter’s implementation sentence.
- Remove or revise outdated, unnecessary language.
- Clarify that matching funds to state recreational trail funds may include funds from other state agencies, programs or in-kind costs.
- Include additional explanation of eligible project costs to include costs of right-of-way, design and utility costs. As a result, complementary changes were also made to the ineligible activities. The advance eligibility waiver process has been rewritten and now includes the ability to incur certain design costs.
- Rewrite the requirement that applications include a formal resolution from the jurisdiction to more clearly communicate requirements that a project be dedicated to public use and be properly maintained.
- Provide extra points in scoring for shovel-ready projects.

Notice of Intended Action for these amendments was published in the June 21, 2017, Iowa Administrative Bulletin as **ARC 3132C**. The Iowa Farm Bureau submitted comments concerning condemnation of land for trails and prioritizing non-state grant cash match over in-kind contributions in application scoring. The Department addressed these concerns by making the following modifications:

- Subrule 165.15(1) was modified by adding “and as allowed by Iowa Code section 6A.21” so project applicants know certain agricultural land cannot be condemned for state recreational trails purposes.
- Subrule 165.26(2) was modified by adding “Projects with cash match (5 points)” in a new paragraph “h.”

The amendments are otherwise identical to those published under Notice of Intended Action.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 465B.

These amendments will become effective October 4, 2017.

The following amendments are adopted.

ITEM 1. Strike “(312)” wherever it appears in **761—Chapter 165** and insert “(465B)” in lieu thereof.

ITEM 2. Adopt the following new definitions of “Commission,” “Department,” and “Recreational trail” in rule **761—165.1(312)**:

“*Commission*” means the state transportation commission.

“*Department*” means the Iowa department of transportation.

“*Recreational trail*” means a thoroughfare or track across land or snow, used for recreational purposes such as pedestrian activities including wheelchair use; skating or skateboarding; equestrian activities, including carriage driving; nonmotorized snow trail activities, including skiing; bicycling or use of other human-powered vehicles; providing access to aquatic or water activities; and motorized

vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

ITEM 3. Amend rule **761—165.1(312)**, definition of “Recreational trails fund,” as follows:

“*Recreational trails fund funds*” means ~~the fund created~~ funds appropriated for the acquisition, construction, and improvement of recreational trails ~~pursuant to Iowa Code section 312.2.~~

ITEM 4. Amend rule 761—165.2(312) as follows:

**761—165.2(312) Information and forms.** Information, instructions and application forms may be obtained from: ~~the Office of Project Systems Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1225 (515)239-1664; or through the department’s Web site at [www.iowadot.gov](http://www.iowadot.gov). All inquiries regarding the recreational trails program should be directed to this office.~~

ITEM 5. Amend paragraph **165.5(2)“a”** as follows:

a. The ~~transportation~~ commission is solely responsible for all funding commitments and shall determine the projects to be funded, subject to the availability of recreational trails funds. The commission may approve, modify, or deny an application. The commission may fund all or part of a project and may make funding conditional upon adherence to a time schedule or to fulfillment of an agreement.

ITEM 6. Amend subrule 165.12(2) as follows:

**165.12(2) Criteria.** A proposed recreational trails project shall meet all of the following requirements:

a. and b. No change.

c. The project shall include a contribution of at least 25 percent matching funds. ~~Notwithstanding, at the discretion of the department, funds may be granted up to a maximum of 80 percent. Except as provided in subrule 165.22(3), matching funds shall be from sources other than the recreational trails program.~~

d. Matching funds ~~shall not~~ may include other grants from other state agencies or the provision programs if their laws and rules allow and the donation of in-kind labor, materials, equipment, and services from a third party. The department has the sole authority to determine the value of noncash contributions. The value of donated land may be an eligible matching contribution if:

(1) and (2) No change.

ITEM 7. Amend rule 761—165.15(312) as follows:

**761—165.15(312) Eligible project costs.**

**165.15(1) Land.** Land acquisition costs including, but not limited to, ~~appraisal costs~~ appraisals, ~~negotiation costs,~~ compensation and ~~the required cultural resources survey pursuant to Iowa Code chapter 305A~~ surveys necessary to comply with applicable local, state and federal laws, rules and regulations are eligible project costs. Land may be acquired by lease, easement or fee simple and as allowed by Iowa Code section 6A.21. ~~Except for primary road projects, the~~ The performance of land negotiation and acquisition activities shall not be the responsibility of the department although the department may provide advisory services.

**165.15(2) Other eligible costs.** Other project costs that are eligible for funding are limited to the following:

a. to d. No change.

e. Design engineering costs leading to construction plan development and construction inspection costs directly associated with the project.

f. No change.

g. Utility relocation costs necessary for trail construction or improvement if the utility is not located on public right-of-way. Reconstruction or adjustment of utilities including but not limited to water, sanitary sewer, electric, telephone, and natural gas when utilities are located on private property

and require replacement or relocation due to project construction; or said utilities are located in the public right-of-way and the utility is not required to relocate at its own expense.

*h.* No change.

ITEM 8. Amend rule 761—165.17(312) as follows:

**761—165.17(312) Ineligible project costs.**

**165.17(1) *Before commission approval.*** Any and all costs incurred prior to a funding commitment by the commission approval of funding for a project are ineligible for funding under the recreational trails program notwithstanding rule 761—165.19(465B).

**165.17(2) *Other ineligible costs.*** Other project costs that are ineligible for funding include, but are not limited to, the following:

*a.* Routine maintenance of a trail, bridge, culvert, fence or sign; winter maintenance of a trail or bridge, including but not limited to snow plowing, sanding, and salting.

*b.* No change.

*c.* Expenses associated with the preparation and submission of a project application.

*d.* Predesign engineering, feasibility, or alignment studies and other planning expenses.

*e.* ~~Utility costs other than those listed in rule 165.15(312) construction, reconstruction or adjustment except for those activities or costs described in subrule 165.15(2).~~

*f.* No change.

*g.* Purchases of office furnishings or equipment, construction or maintenance equipment, or personal property.

~~*h.* Sanitary sewers or water mains except as necessary for rest room construction.~~

*i. h.* General government expenses and expenses associated with the provision of any public service that are not otherwise eligible for project funding.

ITEM 9. Rescind rule 761—165.19(312) and adopt the following new rule in lieu thereof:

**761—165.19(465B) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.**

**165.19(1) *Need for advance eligibility.*** If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a recreational trails program funding commitment, a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with recreational trails program funding without jeopardizing the project's eligibility for funding approval, but does not imply or guarantee that the commission will commit recreational trails program funding to a subsequent application.

**165.19(2) *Request, justification and review.*** The request must be received by the department prior to the expenditure and must include justification regarding the extreme urgency and necessity to incur costs prior to a recreational trails program funding commitment. A request for land acquisition must also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests must include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant must be submitted which includes the scope of services to be rendered. Costs for recreational trails program application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 165.17(2)“c” and “d” remain ineligible for recreational trails program funding and shall not be included in a request for determination of advance eligibility. The department will review the submittal. If the requirements of this rule are met, the department will provide written confirmation of the determination of advance eligibility.

**165.19(3) Requirements.** Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance eligibility must be noted in the subsequent recreational trails program funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with recreational trails program funds if the property acquired or design work completed is not necessary to construct the proposed recreational trails program project included in the subsequent application. Design costs receiving a determination of advance eligibility may not exceed 10 percent of the total construction costs for the project. An application for funding which includes the expenditure must be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for recreational trails program funding.

ITEM 10. Amend rule 761—165.22(312) as follows:

**761—165.22(312) Application.**

**165.22(1) Submission.** An eligible applicant shall complete and submit an ~~original and four copies of a project application~~ on a form and in the quantity prescribed by the department.

*a. and b.* No change.

*c.* ~~The deadlines are January 2 and July 1 or the first workdays following those dates. The application deadline shall be on the first day of the fiscal year for which funding has been provided to the program and any additional stated deadline as deemed necessary by the department to fully award program funding.~~

*d.* ~~Applications shall be submitted to the office of project planning. To be considered in the current funding cycle, an application must be received by project planning by 4:30 p.m. on the day of the deadline received by the department or postmarked by the stated application deadline.~~

**165.22(2) Contents of application.** Each application shall contain the following:

*a.* No change.

*b.* A project concept statement including a location map, a cross section and a sketch of the project intended to be constructed with program funds. The proposed project need not be designed before applying, but the concept must be reasonable from a transportation engineering standpoint and detailed enough to generate project cost estimates.

*c.* An itemized cost estimate for the total project to be constructed showing for each item the cost and funding source. When a project is part of a larger multiphase project, the application shall differentiate the costs and scope of the proposed construction project from the costs and scope of the overall multiphase project.

*d.* A time schedule for ~~the total trail project with the applicant's written assurance of project completion as scheduled.~~ A time schedule adjustment may be approved by the department if the project involves unusually complex studies, extensive real estate negotiations, extensive analyses for environmental clearances, complex planning for associated developments, or another compelling reason.

*e.* No change.

*f.* ~~An official endorsement of the application from the responsible authority and written assurance from that authority that the total trail used to justify the project~~ A formal resolution passed by the governing body of the responsible authority endorsing the application and the timeline for project completion provided therein. The resolution shall also state that the proposed trail project will be adequately maintained and made available for the intended public use for a minimum of 20 years after completion of the project except as approved by the commission.

**165.22(3) Funding requests.**

~~*a.* An applicant shall specify in the application the amount of the grant funding grant requested from the recreational trails fund program and may offer a matching fund contribution larger than is required.~~

~~*b.* In lieu of a grant request, an applicant may request alternative funding, such as a loan at below market interest rate, a no-interest loan, or a partial repayment of principal.~~

~~*c.* If recreational trails funds are loaned as matching funds, the value of the loan repayments for matching fund purposes shall be based on net present value.~~

ITEM 11. Amend rule 761—165.23(312) as follows:

**761—165.23(312) Application procedure.**

~~165.23(1)~~ An application may be submitted at any time and shall be dated when received in the office of project planning. Once an application has been submitted, no further information shall be accepted from the applicant unless specifically requested by the department.

~~165.23(2)~~ 165.23(1) If an application is incomplete, the All applications for funding shall be complete. The department shall reserves the right to return the an incomplete application to the applicant to be resubmitted when complete without further consideration for funding. A resubmitted application shall be dated when it is received in the office of project planning. An applicant may then submit a completed application for the next available funding cycle.

~~165.23(3)~~ 165.23(2) An application that is considered but not funded in one funding cycle may be resubmitted by the applicant for consideration in the next cycle.

~~165.23(4)~~ 165.23(3) An applicant may withdraw an application at any time.

ITEM 12. Amend rule 761—165.26(312) as follows:

**761—165.26(312) Evaluation and approval.**

**165.26(1)** No change.

**165.26(2)** The department shall evaluate each complete application primarily on the basis of whether the predicted use of the trail justifies the construction and maintenance costs including, but not limited to, the following criteria:

*a.* to *e.* No change.

*f.* Special facilities for ~~the handicapped~~ persons with disabilities (5 points).

*g.* Project is shovel-ready and planned to be completed within three years of award of funding (25 points).

*h.* Projects with cash match (5 points).

**165.26(3)** Completed applications shall be reviewed by a committee composed of one representative from ~~each of these departments: natural resources, economic development, cultural affairs, and transportation~~ state agencies with jurisdiction over transportation, tourism, cultural resources and natural resources. The committee shall recommend applications to the department by ranking them in order of funding priority.

**165.26(4)** The department shall prepare a list of applications and funding recommendations and present it to the commission for final approval and award of funding.

ITEM 13. Amend rule 761—165.30(312) as follows:

**761—165.30(312) Project agreement.**

**165.30(1)** After the commission has approved funding for a recreational trails project, the department and the applicant shall execute a project agreement.

*a.* ~~The department shall administer a project located on a primary road; however, the department by agreement may delegate part or all of this responsibility.~~

*b. a.* ~~For all other projects, the~~ The agreement shall specify the responsibilities for project planning, design, land acquisition, contracting, construction and materials inspection, and documentation and the criteria for each. The agreement shall also specify the overall funding level approved and contain an estimated budget for eligible work items.

*b.* The agreement shall require the applicant to comply with all local, state and federal laws, rules and regulations that may apply to the project.

**165.30(2)** No change.

**165.30(3)** Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, ~~may be~~ are eligible for reimbursement if ~~prior written authorization is obtained from the department and~~ a project agreement is subsequently executed. However, under no circumstances shall any reimbursement be paid until the project agreement has been executed.

**165.30(4)** No change.

ITEM 14. Amend rule 761—165.33(312), introductory paragraph, as follows:

**761—165.33(312) Noncompliance.** The ~~commission~~ department may revoke funding commitments, seek repayment of funds ~~loaned or granted~~ already reimbursed, or take both actions if:

ITEM 15. Amend **761—Chapter 165**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter ~~312~~ 465B.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/30/17.